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FCC Mail Room

March 24, 2009

Marlene H. Dortch, Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW, Suite TW-A325  
Washington, DC 20554

Re: Comments of Standing Rock Sioux Tribe  
GN Docket No. 09-29

Dear FCC:

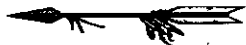
These comments are submitted on behalf of the Standing Rock Sioux Tribe, a federally recognized Indian Tribe, for the above-named proceeding on rural broadband strategy. The Standing Rock Tribal Government has experience in attempting to overcome obstacles to bring basic telephone and broadband service to members of the Tribe on the Standing Rock Indian. This experience should assist in preparation of the joint report to Congress "to identify how specific Federal agency programs and resources can best respond to rural broadband requirements and overcome obstacles that currently impede rural broadband deployment," as required by Section 6112 of the 2008 Farm Bill. The Tribe's experience demonstrates that USDA is the obstacle that impedes rural broadband deployment in Indian Country.

In September of 2004, with the help of a telecommunications consulting firm, the Tribe prepared a comprehensive application and applied to USDA's Rural Utility Service (RUS) for Community Connect Broadband Program Grants in an effort to extend broadband services to unserved areas on the Standing Rock Indian Reservation. RUS made one phone call to the local non-Indian telephone cooperative, was told the cooperative had plans to extend broadband services to the unserved areas, and on the sole basis of that call denied the Tribe's comprehensive applications without an opportunity to respond.

After a thorough investigation on the Standing Rock Indian Reservation beginning in 2001, which included house-to-house surveys of many Reservation residents, Indian and non-Indian, the Tribe learned that the local phone company, West River Telecommunications, a telephone cooperative funded in part by RUS and Universal Service Funds, systematically prevented Indian households from receiving basic telephone service or functional telephone service. After unsuccessfully attempting to address the service problems with the cooperative, the North and South Dakota utility commissions, and the FCC, the Tribe decided it had to try to serve Indian households directly, and it applied for the broadband grants.

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The Tribe learned through its investigations that nearly 100% of non-Indian households on the Reservation had telephone service, many of which also had broadband service, while only about 70% of Indian households on the Reservation had basic phone service. To compound the telephone penetration problem, around 67% of those Indian households with phone service also had toll-blocking on their phones so they could not make long-distance calls. The local calling areas ("extended area service" or "EAS") were designed by the cooperative so that calls within the Reservation were long-distance calls, while calls to non-Indian communities off the Reservation were not. After the Tribe complained to state and federal regulators, the cooperative expanded the EAS so that Reservation calling is now accomplished without incurring a long-distance charge. Now, for the first time, those with toll-blocking may call their friends, family, schools, health facilities, police and fire services, and governmental offices within the Reservation.

Among other findings of the investigations, the Tribe learned that local telephone taxes of off-Reservation municipalities were being illegally imposed by the cooperative on Indian families on-Reservation. Long-distance charges were being imposed on '911' calls. Exorbitant installation charges were being imposed on Indians for new phone service, a practice condemned by the RUS. One member of the cooperative's board of directors sent the Tribe a solicitation letter for the Citizens Equal Rights Foundation, an anti-Tribal hate group. He later apologized after the Tribal Chairman complained to the cooperative. The Tribe photographed bare phone cables that the cooperative left for several months lying exposed on the ground through Tribal housing areas. Photos were also taken of the cooperative's open phone-line trenches that it left unburied in Tribal housing areas for several months.

Such forms of institutionalized racism are prevalent in the Dakotas.<sup>1</sup> Even the South Dakota Legislature had taken direct action against a Tribally-owned telecommunication company that sought to expand service by enacting a state statute designed to prevent it,<sup>2</sup> an action later upheld by the South Dakota Supreme Court<sup>3</sup> and sanctioned by the FCC.<sup>4</sup>

After the Standing Rock Sioux Tribe complained of discriminatory service of the cooperative to federal and state regulators, which seemed only to fall on deaf ears, the Tribe took its case to the Department of Justice, which also ignored the complaints. When RUS denied the Tribe's broadband

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<sup>1</sup> For recent judicial findings of extensive institutionalized racism directed toward Native Americans in South Dakota see *Bone Shirt v. Hazeltine*, 336 F. Supp. 2<sup>d</sup> 976, 1028-1033 (DSD, 2004), affirmed, 461 F.3d 1011 (8th Cir., 2006). The court concluded that "there is a long and extensive history of discrimination against Indians in South Dakota..." and that "[t]he effects of this history are on-going." 336 F. Supp. 2<sup>d</sup> 1034.

<sup>2</sup> See SDCL § 49-31-59.

<sup>3</sup> *Cheyenne River Sioux Tribe Tel. Auth. V. Public Utilities Commission of S.D.*, 595 N.W.2<sup>d</sup> 604 (S.D. 1999).

<sup>4</sup> In the Matter of Cheyenne River Sioux Tribe Telephone Authority and US West Communications, Inc., Docket No. 98-6, 17 FCCR 16,916 (Aug. 21, 2002)(FCC holds federal preemption is not a bar to state jurisdiction over a tribally-owned carrier under Section 214(e)(6) of the Telecommunications Act of 1996).



applications, the Tribe filed a civil rights complaint with the USDA Office of Civil Rights. That was in December of 2004. Four years later the Tribe received a final decision, which found no problem with either the cooperative or RUS. Curiously, however, RUS had refused to cooperate in the Office of Civil Rights investigation. RUS officials also interfered with the investigation and attempted to communicate directly with the complainant, through its undersigned attorney. There was no adjudicatory process, no hearing, no right to address evidence and no rules. In short, the civil rights complaint process is nothing short of a sham designed to frustrate the filing of complaints and to obtain an advance preview of evidence complainants might introduce in future litigation.<sup>5</sup> Even after the final decision, the Office of Civil Rights took over five months to respond to the Tribe's request under the Freedom of Information Act for the record of investigation upon which the decision is purportedly based.

Congress has been investigating this flawed civil rights complaint process through hearings for several years. In fact, the 2008 Farm Bill contains a new reporting requirement that now requires the USDA to submit yearly reports to Congress about the activities of its Office of Civil Rights.<sup>6</sup>

The Tribe's experience with USDA's RUS program and its rural cooperative is indicative of a deep-seated obstacle to broadband deployment, an obstacle that it appears only Congress will be able to address. The problem has been evolving since the late 1800's and beginning of the 1900's, when non-Indians began acquiring Indian lands within reservations during implementation of the General Allotment Act. For the Standing Rock Sioux Tribe that process began under the authority of the Act of March 2, 1889,<sup>7</sup> which first authorized non-Indian acquisition of reservation lands in violation of the Tribe's 1868 Treaty with the United States.<sup>8</sup>

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<sup>5</sup> See Monica M. Clark, SO NEAR, YET SO FAR: THE PAST, PRESENT, AND FUTURE OF THE COMPLAINTS PROCESS WITHIN THE USDA, 32 S.U.L.Rev. 139 (2005)(for a detailed critique of the flawed process).

<sup>6</sup> "Each year, the Secretary shall--

(1) prepare a report that describes, for each agency of the Department of Agriculture--

(A) the number of civil rights complaints filed that relate to the agency, including whether a complaint is a program complaint or an employment complaint;

(B) the length of time the agency took to process each civil rights complaint;

(C) the number of proceedings brought against the agency, including the number of complaints described in paragraph (1) that were resolved with a finding of discrimination; and

(D) the number and type of personnel actions taken by the agency following resolution of civil rights complaints;

(2) submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a copy of the report; and

(3) make the report available to the public by posting the report on the website of the Department." Section 14010, PL 110-234, 122 Stat 923, 1447 (May 22, 2008).

<sup>7</sup> 25 Stat. 888.

<sup>8</sup> Art. 2, Treaty of April 29, 1868, 15 Stat. 635 (established reservations for the "absolute and undisturbed use and occupation" of the Great Sioux Tribes).

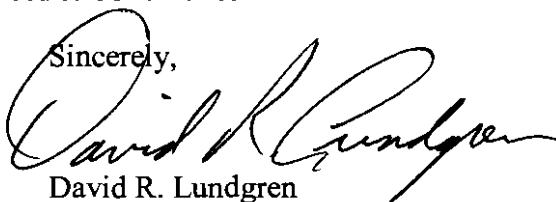


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As non-Indians acquired reservation lands in violation of every treaty made, Congress authorized the installation of utilities through rights of way.<sup>9</sup> As non-Indians acquired utilities on reservations, service to Indians was most often ignored. Telephone penetration rates on Indian lands bear this out, even today. In reliance on the assumption that rural utilities were serving everyone, the USDA and FCC were authorized by Congress to extend federal financing to rural cooperatives to help build their infrastructure. What has been forgotten during this evolution is that the cooperatives are often comprised of, and governed by, the very non-Indians who acquired or continue to try to acquire, Indian lands. The solicitation letter from the cooperative's director to the Tribe is more current evidence of that mindset.

Consideration must be given to the service problems faced by American Indians before processes are implemented for broadband deployment in Indian Country. Many Indian reservations are "served" by RUS borrowers. Not all are served as poorly as on the Standing Rock Reservation, but it can no longer be assumed that rural carriers are adequately considering service issues faced by tribes and their communities. These obstacles need to be removed.

Sincerely,



David R. Lundgren

cc: Steve Emery, Esq., Standing Rock Sioux Tribal Attorney  
Competition Policy Division, Wireline Competition Bureau, FCC  
Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, FCC  
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<sup>9</sup> See, e.g., Act of Mar. 3, 1901, for roadways, telephone lines and condemnation of allotted lands. 31 Stat. 1058 (now codified at 25 U.S.C. §§ 311, 319 & 357, respectively).